IN THE SUPREME COURT OF THE STATE OF ALASKA

KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Appellants, v. ALASKANS FOR BETTER ELECTIONS, Appellee.	)	Supreme Court No. **S-17629**

Trial Court Case No. **3AN-19-09704 CI**

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE YVONNE LAMOUREUX, JUDGE

BRIEF OF APPELLANTS KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA AND THE STATE OF ALASKA, DIVISION OF ELECTIONS

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CONSTITUTIONAL PROVISIONS

Alaska Const. art. II, § 13. Form of Bills.
Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Alaska Const. art. XII, § 11. Law-Making Power.
As used in this constitution, the terms "by law" and "by the legislature," or variations of these terms, are used interchangeably when related to law-making powers. Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.

STATUTES

AS 15.45.080. Bases of denial of certification.

The lieutenant governor shall deny certification upon determining in writing that

(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form;
(2) the application is not substantially in the required form; or
(3) there is an insufficient number of qualified sponsors.

JURISDICTION

This is an appeal from the decision of the superior court, the Honorable Yvonne Lamoreaux, granting summary judgment to Alaskans for Better Elections. This Court has jurisdiction over this case under AS 22.05.010(b) and Appellate Rule 202(a).

PARTIES

The appellants are Kevin Meyer, Lieutenant Governor of the State of Alaska, and the Alaska Division of Elections (collectively, "the State"). The appellee is Alaskans for Better Elections, the ballot initiative committee sponsoring 19AKBE ("the sponsors").

ISSUES PRESENTED

1. *Single-subject rule*. Ballot initiative 19AKBE would make three significant changes to Alaska law: (1) replacing the party primary system with an open nonpartisan primary; (2) establishing ranked-choice voting in the general election; and (3) adding new disclosure and disclaimer requirements to campaign finance law. Did the lieutenant governor properly decline to certify 19AKBE because it contains multiple subjects in violation of AS 15.45.080 and article II, section 13 of the Alaska Constitution?

2. *Stare decisis*. If the Court views its single-subject precedents as mandating the certification of 19AKBE despite its multiple subjects, should the Court overrule those precedents and craft a meaningful single-subject rule for ballot initiatives?

INTRODUCTION

This case asks the Court to determine whether a proposed ballot initiative that would effect three fundamental and independent legal reforms is sufficiently "confined to one subject" simply because the three reforms all have something to do with elections.

The Court must decide whether initiative sponsors can box Alaskan voters into an all-or-nothing vote on a set of multiple distinct and major policy changes about which they may have differing views, or whether sponsors should instead incur the minor inconvenience of separating distinct proposals to allow more meaningful voter choice.

Ballot initiative 19AKBE would (1) replace the party primary system with an open nonpartisan primary; (2) establish ranked-choice voting in the general election; and (3) add new disclosure and disclaimer requirements to campaign finance law.

In early single-subject cases, the Court developed an extremely lax single-subject standard that has been applied to allow multi-faceted legislation covering broad "subjects" like "land,"[1] "criminal law,"[2] and "civil actions."[3] The three reforms in 19AKBE fall under the similarly broad topic of "elections." But dissents—and even majority opinions—have expressed skepticism about permitting such broad "subjects" to qualify as "single" subjects.[4]

And in its most recent case, *Croft v. Parnell*, the Court recognized that in the ballot initiative context, a multi-faceted proposal deprives voters of an "opportunity to send a clear message on each subject" and "run[s] the risk of garnering support" from

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1 *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 414-15 (Alaska 1982).

2 *Galbraith v. State*, 693 P.2d 880, 885-86 (Alaska App.1985).

3 *Evans v. State*, 56 P.3d 1046, 1049, 1070 (Alaska 2002).

4 *See Gellert v. State*, 522 P.2d 1120, 1124 (Alaska 1974) (Fitzgerald, J., dissenting); *State v. First Nat'l Bank of* Anchorage, 660 P.2d 406, 414 (Alaska 1982); *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1180 (Alaska 1985) ("We still have the same reservations which we expressed in *First National Bank.*") & 1182 (Moore, J., dissenting) & 1189 (Burke, J., dissenting).

voters who are "indifferent—or even unsupportive—of" some of its reforms.[5] 19AKBE runs afoul of the single-subject principles recognized in *Croft* because packaging together these three dramatic—and very different—reforms "does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal."[6]

In the alternative, if the Court agrees with the superior court that *Croft* did not modify earlier caselaw, the Court should overrule that caselaw and restore substance to the single-subject rule in the ballot initiative context. Neither the constitution nor policy considerations mandate using the same extremely lax single-subject standard in the initiative context as in the legislative context, and the Court's prior conclusion to the contrary was originally erroneous. More good than harm will come from overruling that precedent because requiring initiative sponsors to separate distinct proposals will not inhibit direct democracy—on the contrary, it will improve the initiative process by helping identify and effectuate the will of the voters. The Court can, and should, apply a meaningful single-subject standard to initiatives that will better protect the ability of Alaskan voters to express their will. Initiative sponsors should not be permitted to logroll substantial divergent legislative changes into a single initiative that voters must accept or reject as a single package. 19AKBE fails to satisfy a meaningful single subject standard, and should not be permitted to go forward in its present form.

This Court should therefore reverse the superior court's decision.

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5 236 P.3d 369, 374 (Alaska 2010).

6 *Id.* at 373.

STATEMENT OF THE CASE

I. Alaskans for Better Elections proposed initiative 19AKBE, which would implement three major election and campaign finance reforms.

In July 2019, Alaskans for Better Elections filed initiative application 19AKBE with the Division of Elections; the proposed bill included the following lengthy title:

> An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'. [Exc. 28]

The proposed initiative bill would make at least three significant changes to Alaska law: (1) replacing the party primary system with an open nonpartisan primary; (2) establishing ranked-choice voting in the general election; and (3) adding new disclosure and disclaimer requirements to campaign finance law. [Exc. 54]

The first proposal in 19AKBE would eliminate the political party primary system, such that political parties would no longer select their candidates to appear on the general election ballot. [Exc. 8, 54] Instead, there would be an open nonpartisan primary election in which all candidates would appear together on one ballot. [Exc. 16-17, 54] Candidates could choose to have their political party preferences listed next to their names on the

ballot or be listed as "undeclared" or "nonpartisan." [Exc. 54] The four candidates with the most votes in the primary election—regardless of party—would have their names placed on the general election ballot. [Exc. 17, 54]

The second proposal in 19AKBE would establish ranked-choice voting for the general election. Instead of choosing just one candidate to vote for, voters could "rank" all of the candidates in order of preference, ranking their first choice candidate as "1", second choice as "2", and so on. [Exc. 18, 54] Ballots would first be counted for the candidate that the voter ranked "1." [Exc. 18, 54] If no candidate received a majority after counting the first-ranked votes, then the candidate with the least amount of "1" votes would be removed from counting. [Exc. 18, 54] Those ballots that ranked the removed candidate as "1" would then be counted for the voters' "2" ranked candidate. [Exc. 18, 54] This process would repeat until one candidate received a majority of the remaining votes. [Exc. 18, 54] Voters could still opt to choose only one candidate—ballots that did not rank all the available candidates would not be considered invalid. [Exc. 18, 54]

The third proposal in 19AKBE would require additional disclosures for contributions to independent expenditure groups and about the sources of contributions in campaigns. [Exc. 16, 54] It would also require a disclaimer on paid election communications by independent expenditure groups funded by mostly out-of-state money. [Exc. 16, 54]

II. Lieutenant Governor Meyer denied certification of 19AKBE on the ground that it violates the single-subject rule.

Once an initiative application is filed, the Lieutenant Governor has 60 days to review the application and determine whether it is "in proper form."[7] Alaska Statute 15.45.080 instructs the Lieutenant Governor to deny certification if "the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form."

After a careful legal review of 19AKBE, Attorney General Kevin Clarkson advised Lieutenant Governor Kevin Meyer that the proposed bill contained more than one subject and therefore recommended denial of certification. [Exc. 53-70] The Attorney General concluded that other than the violation of the single-subject rule, the initiative was in the proper form. [Exc. 69] On August 30, 2019, Lieutenant Governor Meyer denied certification of 19AKBE citing the Attorney General's Opinion. [Exc. 71]

III. The sponsors sued and the superior court ruled in their favor.

On September 5, 2019, Alaskans for Better Elections filed this lawsuit challenging the Lieutenant Governor's decision not to certify 19AKBE. [Exc. 1-4] The parties filed expedited briefing on cross-motions for summary judgment. [Exc. 5-26, 106-122, 123-33, 134-145]

The superior court ruled in favor of the sponsors, relying on a series of cases from the 1970s and 1980s that applied a very lax interpretation of the single-subject rule.

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[7] AK Const. art. XI, § 2; AS 15.45.070.

[Exc. 146-57] The court ordered the State to distribute petition booklets to the sponsors so that they could begin collecting signatures in support of 19AKBE. [Exc. 157]

The State moved for a stay pending appeal, but the superior court denied it, opining that this Court is unlikely to revisit its precedent on the single-subject rule. [Exc. 175-78] The superior court observed that this Court declined to revisit its precedent in *Yute Air, Inc. v. McAlpine*,[8] in part because the initiative sponsors in that case—who had already gathered the signatures necessary to place their initiative on the ballot—had "relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot."[9] [Exc. 176-77]

The State then sought very expedited consideration of its appeal so as to minimize these mounting reliance interests, observing that although the sponsors had "not yet gathered the signatures necessary to place [19AKBE] on the ballot, and thus do not yet have the reliance interests of the sponsors in *Yute Air*," that absent very expedited consideration, "initiative sponsors will likely always have incurred the kind of reliance discussed in *Yute Air* by the time this Court considers an initiative appeal." [Mot. to Expedite Appeal at 4]

The Court declined to super-expedite this appeal, rejecting the idea that it might be "swayed to not consider the appeal's legal merits because of perceived constraints raised by [the sponsors'] reliance interest" and stating that it will "give full and fair

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8 698 P.2d 1173 (Alaska 1985).

9 *Id.* at 1181.

consideration to this appeal's legal merits, including [the State's] stated intent to ask us to reverse long-standing precedents." [Order Denying Mot. to Expedite Appeal at 1]

STANDARD OF REVIEW

This Court reviews a summary judgment decision de novo,[10] and applies its independent judgment when interpreting constitutional provisions or statutes.[11] The Court adopts the "rule of law that is most persuasive in light of precedent, reason, and policy."[12] The Court will overrule a prior decision "only when convinced: (1) 'that the rule was originally erroneous or is no longer sound because of changed conditions,' and (2) 'that more good than harm would result from a departure from precedent.'"[13]

ARGUMENT

I. Under existing caselaw, Alaskan voters should not be forced to vote on the three independent reforms proposed by 19AKBE as a single package.

In *Croft v. Parnell*, this Court recognized that in the initiative context, the requirement that a bill be confined to a single subject safeguards "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[14] A multi-subject initiative deprives voters of an "opportunity to send a clear message on each subject" and "run[s] the risk of garnering support" from voters who are

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10 *State v. Schmidt*, 323 P.3d 647, 654 (Alaska 2014).

11 *Id.* at 655.

12 *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016) (citation omitted).

13 *State v. Carlin*, 249 P.3d 752, 757-58 (Alaska 2011) (quoting *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173, 1175-76 (Alaska 1993)).

14 236 P.3d 369, 372 (Alaska 2010).

"indifferent—or even unsupportive—of" some of its reforms.[15] The Lieutenant Governor properly declined to certify 19AKBE because it contains three separate, major reforms, thus creating the risks that *Croft* recognized the single-subject rule is meant to prevent. Under *Croft*, voters should be empowered to vote on these three reforms separately.

A. *Croft v. Parnell* recognizes that the purpose of the single-subject rule in the initiative context is to protect voters' ability to effectively and meaningfully exercise their right to vote on distinct proposals.

Single-subject rules for bills are meant "to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits."[16] They restrain "logrolling in the legislative process," which "consists of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."[17] When a law contains multiple subjects "it is impossible for the court to assess whether either subject would have received majority support if voted on separately."[18] In the ballot initiative context, a court conducting a single-subject inquiry should consider "whether a measure is drafted in such a way that those voting on it may be required to vote for something of which the voter disapproves in order to obtain approval of an unrelated law."[19]

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15 *Id.* at 374.

16 *Minnesota v. Cassidy*, 22 Minn. 312, 322 (1875).

17 *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974); *see also* Proceedings of the Alaska Constitutional Convention (PACC) 1746-47 (Jan. 11, 1956) (discussion of the single-subject requirement and the concern over log-rolling).

18 *City of Burien v. Kiga*, 31 P.3d 659, 663 (Wash. 2001) (en banc).

19 *Amalgamated Transit Union Local 587 v. State*, 11 P.3d 762, 784 (Wash. 2000) (en banc), *opinion corrected*, 27 P.3d 608 (Wash. 2001).

In 2010, in its most recent single-subject case—*Croft v. Parnell*—this Court recognized that protecting the will of the voters is key in a single-subject analysis of a ballot initiative.[20] Enforcing the single-subject rule safeguards "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[21] It allows the voters to "express their will through their votes more precisely," and prevents "the adoption of policies through stealth or fraud" or "the passage of measures lacking popular support by means of log-rolling."[22]

The Court concluded that the initiative at issue in *Croft*—which sought to publicly fund state elections by increasing the oil production tax—impermissibly encompassed multiple subjects.[23] That initiative "directly implicate[d] one of the main purposes of the single-subject rule—the prevention of log-rolling—in two ways."[24] First, "coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject."[25] And second, given that the initiative also included a non-binding directive that the legislature transfer leftover funds to the Permanent Fund Dividend program, the Court reasoned that "offering the chance of increased Permanent Fund Dividend payments runs

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20 *Croft*, 236 P.3d. at 372.

21 *Id.*

22 *Id.*

23 *Id.* at 374.

24 *Id.*

25 *Id.*

the risk of garnering support for the clean elections program from voters who are otherwise indifferent—or even unsupportive—of public funded campaigns."[26]

In *Croft*, neither party argued that a different single-subject standard applies to initiatives than to regular legislation, so the Court did not directly address that idea, noting only that the single-subject rule does indeed apply to initiatives.[27] But the Court's reasoning recognized the special dangers of log-rolling in initiatives: a multi-subject initiative deprives voters of an "opportunity to send a clear message on each subject" and "run[s] the risk of garnering support" from voters who are "indifferent—or even unsupportive—of" some of its reforms.[28] Voters have only one chance to provide an up-or-down vote, regardless of their feelings on distinct provisions. Unlike legislators, they cannot deliberate, propose amendments to discrete subparts, and compromise. It is therefore critical that initiatives present voters with clear choices. Otherwise, an unpopular proposal could easily "piggy back" on a popular but unrelated proposal as long as the two could be combined under some abstract single general topic like "privacy." *Croft* recognizes that the single-subject rule is meant to prevent this, limiting the risk of "the passage of measures lacking popular support."[29] Following *Croft*, voters should not be forced to struggle to express their political will through an all-or-nothing vote on a set of multiple distinct proposals.

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26 *Id.*

27 *Id.* at 371 n.6.

28 *Id.*

29 *Id.* at 372.

The Court in *Croft* focused on whether the different parts of the initiative were logically interrelated, such that making one change to the law informed or sensibly resulted in another change.[30] Although the sponsors in *Croft* asserted that all of the provisions fell under the general subject of "clean elections," the Court looked at how the provisions changing oil and gas taxes actually interfaced with the provisions on public funding of elections, finding that they were not logically connected.[31] Courts and sponsors can apply this analysis from *Croft*—looking at whether provisions are logically interrelated—to determine whether an initiative addresses a single subject.

B. 19AKBE contains three distinct proposals and would deny voters the opportunity to express their approval or disapproval of each one separately.

Examining 19AKBE through the lens of these single-subject rule principles reveals that it is exactly the kind of legislation the rule was intended to prevent: it would force voters into an all-or-nothing, up-or-down choice on a set of major, independent subjects about which they might have diverging views.

19AKBE lumps together two fundamental changes to Alaska law—replacing the party primary system with a top-four nonpartisan open primary and instituting an entirely new way of counting general election votes—and then adds in some more incremental changes to the State's campaign finance disclosure laws. [Exc. 54] Packaging together

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30 *Id.* at 373-74.

31 *Id.* at 374.

such dramatic—and very different—reforms "does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal."[32]

This is especially true because the first two proposals are not minor tweaks to the law—each will fundamentally reshape Alaska's democratic system. Many voters will likely feel quite differently about the proposal to abolish party primaries and the proposal to reimagine the way Alaskans cast their general election votes. One voter—a loyal party member—may hate eliminating the party primary, but strongly support ranked choice voting to prevent "spoiler" candidates. Another voter—a skeptic of the party system—may love the idea of an open nonpartisan primary, but hate ranked-choice voting, feeling that it may confuse voters or dilute votes. To compound the difficulty, 19AKBE adds yet another subject into the mix, making it even harder for voters to send a clear message. The initiative would add new terms such as "dark money" and "true source" to the campaign finance laws, creating additional disclosure and disclaimer requirements. [Exc. 16, 54] These changes to Alaska's campaign finance laws present voters with yet a third topic that engenders strong opinions and emotions.

Below, the sponsors asserted that their three proposals constitute a "narrow thread of election law reforms" that "seek to elevate the voice of Alaska voters by giving them not only more choices in their elections, but by preventing those choices from being unduly dictated or unknowingly influenced by political parties or large, well-financed interests." [Exc. 15] But even sentences like this one—in which the sponsors attempt to

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32 *Id.*

identify a single common "thread" linking their proposals—actually identify and describe three readily distinct substantive legal reforms. [Exc. 15, 19] Indeed, the sponsors themselves have explicitly acknowledged that their initiative contains three distinct reforms. [Exc. 15] The fact that the parties agree on this basic fact—even though the initiative bill's 74 sections would amend far more than three statutes—demonstrates that a court can discern the different "subjects" that an initiative encompasses, and that initiative sponsors can do so as well.

The sponsors' reliance on vague, umbrella "subjects" like "better elections" to tie their reforms together is similar to the unsuccessful attempt of the sponsors in *Croft* to bridge the single-subject gap using the soft dedication of their initiative's new oil-and-gas tax revenue to fund their initiative's clean elections program.[33] Those sponsors also argued that their new oil production tax was "related to the subject of 'clean elections' because 'the oil industry and the oil field services companies … exert a tremendous and undue influence on Alaska politics and politicians,' and contributions from these groups have been 'fueling [electoral] campaigns in Alaska for years.'"[34] The Court soundly dismissed their logic.[35] The attempt to tie together distinct proposals with a broad concept like "clean elections" did not work in *Croft* and it should not work here.

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33 *Id.*

34 *Id.*

35 *Id.*

19AKBE runs afoul of the principles enunciated in *Croft* because it "deprives voters of an opportunity to send a clear message."[36] The subjects of the primary system, the voting process, and campaign finance are, each in their own right, of significant import to Alaskans. And they directly implicate at least three constitutional rights—the right to advocate for candidates through monetary contributions;[37] the associational right of political parties and political groups to select a standard-bearer;[38] and the right to vote.[39] There is nothing more foundational to our democracy than voting and electing our leaders. How that process should work, how a person's vote is counted, and what role political parties play in that process are questions that impact every Alaskan. To combine those fundamental issues in a single initiative with yet another controversial question is a bridge too far under the single-subject rule.

Indeed, when these same major policy proposals—eliminating party primaries or instituting ranked-choice voting—have been put before voters in other states, they have been separated in distinct ballot initiatives, not combined together, let alone tied to

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36 *Id.* at 372-73.

37 *See Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

38 *See Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008); *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018).

39 *See Sonneman v. State*, 969 P.2d 632, 637 (Alaska 1998) ("[V]oting is unquestionably a fundamental right . . . .").

additional proposals such as campaign finance changes.[40] This illustrates that these proposals are separate major reforms that voters deserve to consider separately.

Under the sponsors' contrary view, voters could be asked to approve or disapprove a multi-faceted initiative covering, for example, veterinary practices, farm regulations, and moose hunting, all under the general topic of "animals." Or an initiative covering such controversial topics as abortion regulations, sex offender registration, and camera-assisted automatic traffic enforcement, all under the general topic of "privacy." Allowing multi-faceted initiatives with such broad, umbrella "subjects" does nothing to advance the single-subject rule's goals—recognized in *Croft*—of allowing voters to "effectively exercise their right to vote," "send a clear message on each subject," and "express their will through their votes more precisely."[41] On the contrary, it undermines these goals.

The sponsors may argue that voters may not like all of the provisions in any given ballot initiative, and that this is not a reason to find a violation of the single-subject rule. But this would be missing the point. Yes, people may have different opinions on the details of a proposal—a voter may, for example, prefer that an open nonpartisan primary advance only two candidates to the general election rather than four. These are the kinds of implementation choices that initiative sponsors get to make. But voters must still be able to "send a clear message" and "effectively exercise their right to vote" by voting on

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40 *See* Secretary of State, State of Washington, Initiative 872, (filed Jan. 8, 2004), https://www.sos.wa.gov/elections/initiatives/text/i872.pdf; Secretary of State, State of Maine, Citizen's Guide to the Referendum Election 48-49 (Nov. 8, 2016), https://www1.maine.gov/sos/cec/elec/upcoming/citizensguide2016.pdf.

41 *Croft*, 236 P.2d at 372 & 374.

entirely different proposals separately.[42] The proposals in 19AKBE are not merely implementation details of the same reform—logically, they are three separate reforms. The details may vary, but each major proposal should be voted on separately.

The sponsors' three proposals are not actually "connected" through cross-references or other logical reliance. None depends on the others to function properly, so each could—and should—be enacted separately in a fully coherent fashion. Nor do they constitute different implementation details of the same reform, such as the set of statutory amendments that are necessary to create a ranked-choice voting system, or the change to campaign finance laws necessary to recognize that candidates for governor and lieutenant governor would have to run jointly in an open nonpartisan primary. Although this latter change concerns campaign finance, it is nonetheless merely an implementation detail of an open nonpartisan primary proposal—not a separate reform. By contrast, 19AKBE's changes to campaign finance disclosure laws that are related to "dark money" are neither implementation details of an open nonpartisan primary system nor of a ranked-choice voting system. They are substantively separate reforms.

19AKBE embodies the kind of log-rolling that the single-subject rule is meant to prevent. The three distinct reforms in the initiative may garner support from distinct constituencies. If one minority of voters wants an open primary, another minority wants ranked-choice voting, and yet another minority wants more campaign finance disclosures and disclaimers, these three minorities could combine to produce enough votes to enact

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42 *Id.* at 372-73.

the initiative. The initiative could thus fundamentally reshape Alaska's democratic process—and foreclose the possibility of repeal by the legislature for two years[43]—all without majority support for any of the three proposals. This risk of log-rolling is precisely what the single-subject rule was intended to prevent.

Thus, under the Court's most recent precedent—*Croft*—19AKBE contains multiple subjects in violation of the single-subject rule, and the Court should reverse the superior court's decision without considering the below stare decisis argument.

II. Alternatively, if the Court views its single-subject caselaw as allowing voters to be forced to consider the three independent reforms proposed by 19AKBE as a single package, the Court should overrule that caselaw.

In the alternative, if this Court agrees with the superior court that *Croft* did not supersede earlier cases and that those cases compelled the superior court's conclusion, this Court should overrule those cases and restore substance to the single-subject rule to protect voter choice in the initiative context. [Exc. 151, 153, 155]

"[S]tare decisis is a practical, flexible command that balances our community's competing interests in the stability of legal norms and the need to adapt those norms to society's changing demands."[44] Under the doctrine of stare decisis, this Court will overrule a precedent only if it believes that the decision was "originally erroneous or is no longer sound because of changed conditions," and "that more good than harm would result from a departure from precedent."[45] This standard is met here because the cases

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43 AK Const. art. XI, § 6.

44 *State v. Carlin*, 249 P.3d at 757 (quoting *Pratt & Whitney*, 852 P.2d at 1175).

45 *Pratt & Whitney*, 852 P.2d at 1175-76.

discussed below were originally erroneous, and more good than harm would result from overruling them to create a meaningful single-subject rule for initiatives that will enhance the power of voters to express their democratic will.

A. The cases applying the same extremely lax single-subject standard to initiatives as to legislation were originally erroneous.

In *Gellert v. State*, the Court adopted a "germaneness" standard for the single-subject rule that "for all practical purposes … renders the constitutional provision meaningless."[46] Members of this Court have repeatedly expressed skepticism about this lax standard.[47] Later, in *Short v. State* and then *Yute Air Alaska, Inc. v. McAlpine*, the Court held that the same largely meaningless standard must apply to ballot initiatives as well as legislation passed by the Legislature, ignoring Justice Moore's persuasive argument to the contrary in dissent.[48] This conclusion was originally erroneous and the Court should overrule it. Neither the constitution nor policy mandates that the Court apply the same extremely lax single-subject rule to legislation and initiatives.

1. Members of this Court have repeatedly expressed skepticism about the extremely lax single-subject standard.

Beginning in the 1960s and 70s, the Court developed a single-subject standard that has been applied to allow multi-faceted legislation covering exceedingly broad topics like

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46 *Gellert v. State*, 522 P.2d 1120, 1124 (Alaska 1974) (Fitzgerald, J., dissenting).

47 *See id.* at 1124 (Fitzgerald, J., dissenting); *State v. First Nat'l Bank of* Anchorage, 660 P.2d 406, 414 (Alaska 1982); *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1180 (Alaska 1985) ("We still have the same reservations which we expressed in *First National Bank.*") & 1182 (Moore, J., dissenting) & 1189 (Burke, J., dissenting).

48 *Short v. State*, 600 P.2d 20, 22 n.4 (Alaska 1979); *Yute Air Alaska, Inc.*, 698 P.2d at 1181.

"land,"[49] "criminal law,"[50] and "civil actions."[51] Over the years, various members of this Court have expressed skepticism about this toothless standard.

A dissenting justice first called the Court's single-subject standard "meaningless" in the 1974 case *Gellert v. State*, when practicalities led the Court to uphold a bond proposition despite log-rolling.[52] Invalidating the proposition would have been difficult under the circumstances: it had already been passed by the voters, and striking it would have blocked capital improvements supported by federal funding. The proposition was designed to raise the State's share of the financing for both a flood-control project in Fairbanks and small-boat harbor projects on the coast, which were to be administered—and partly funded—by the federal government.[53] The plaintiff sued only after the proposition had already been approved by voters in the 1972 general election.[54]

The Court declined to invalidate the bond proposition, opining that "[u]ltimately the decision in cases of this kind must be made on a basis of practicality and reasonableness," and citing an 1891 statement of the Minnesota Supreme Court that "[a]ll that is necessary is that [the] act should embrace some one general subject; and by this is

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49 *First Nat'l Bank of Anchorage*, 660 P.2d at 414-15.

50 *Galbraith v. State*, 693 P.2d 880, 885-86 (Alaska App.1985).

51 *Evans v. State*, 56 P.3d 1046, 1049, 1070 (Alaska 2002).

52 *Gellert*, 522 P.2d at 1120.

53 *Id.* at 1121 (identifying projects) & 1123 (explaining United States Army Corp of Engineers would administer projects after Congressional authorization and funding obtained).

54 *Id.* at 1121 (describing passage of bill and enactment of bond proposition in 1972 and filing of lawsuit in February 1973).

meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."[55] The Court decided that the Fairbanks flood-control project and the coastal harbor projects both "pertain to one ongoing plan for the development of water resources and to the method of funding that plan."[56]

But in quoting the Minnesota court, this Court omitted its further discussion of log-rolling. The Minnesota court went on to explain that "in deciding whether an act is obnoxious to this provision of the constitution, a very good test to apply is whether it is within the mischiefs intended to be remedied."[57] According to that court, the single-subject rule's purpose is "to prevent what is called 'log-rolling legislation' or 'omnibus bills,' by which a number of different and disconnected subjects are united in one bill, and then carried through by a combination of interests."[58]

And as Justice Fitzgerald observed in dissent in *Gellert*, the bond measure was a quintessential example of log-rolling—"i.e., the assembling of a number of pet projects into one bill to consolidate the support for each to achieve a sufficient total"—because "[i]t is designed to gather voter support for a project in the interior of Alaska by linking it with harbor projects dear to the coastal towns and villages."[59] He criticized the Court's

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55 *Id.* at 1123 (quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891)).

56 *Id.*

57 *Johnson v. Harrison*, 50 N.W. at 924.

58 *Id.*

59 *Gellert*, 522 P.2d at 1124 (Fitzgerald, J., dissenting).

use of a standard that "renders the constitutional provision meaningless," noting that although "it is true that all of the projects included in the proposition involve water, so do hydroelectric dams, bridges, ferries, sewer systems, docks and many other things."[60]

Then, in *State v. First National Bank of Anchorage*, the Court's majority opinion itself echoed similar misgivings about the lax single-subject standard.[61] In that case, a land developer argued that the State could not enforce certain consumer protection laws against him because they had been passed in a bill allegedly covering multiple subjects.[62] The challenged bill combined amendments to the Uniform Land Sales Practices Act with amendments to the Alaska Land Act dealing with leasing of state lands and the Division of Lands' zoning authority.[63] The Court noted: "That every section . . . in some respect concerns land is not disputed. However, it is just as clear that many of its provisions have nothing else in common."[64] The Court voiced displeasure that "land" could be considered "one subject" for the purposes of the single-subject rule:

> Were we writing on a clean slate, we would be inclined to find this subject impermissibly broad. Permitting such breadth under the one-subject rule could conceivably be misconstrued as a sanction for legislation embracing the whole body of law.[65]

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60 *Id.*

61 660 P.2d 406, 414 (Alaska 1982).

62 *Id.*

63 *Id.*

64 *Id.*

65 *Id.* at 415.

But the Court felt constrained by its prior decisions, and therefore upheld the law.[66]

A few years later, in *Yute Air Alaska, Inc. v. McAlpine*, the Court reiterated these reservations and drew another vigorous dissent calling the Court's single-subject standard "meaningless."[67] That case upheld—by a narrow majority—an initiative titled "Reducing Government Regulation of Transportation," even though the bill sought to repeal statutes regulating motor and air carriers in Alaska, open the carrier business further, prohibit municipal regulation of such activities, and require the governor to seek repeal of the federal statute requiring the use of United States vessels for shipping goods between U.S. ports.[68] As in *Gellert*, the measure had already gone before voters in an election (and had passed)[69]—a practical consideration the Court noted in declining to overrule its troubled precedent.[70] In a lengthy dissent, Justice Moore opined that the Court "mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce," leading it to become "almost meaningless," whereby even the most disparate subjects could be "enfolded within the cloak of a broad generality."[71] Justice Burke dissented as well, convinced by Justice Moore's reasoning.[72]

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66 *Id.*

67 698 P.2d 1173, 1180 (Alaska 1985) ("We still have the same reservations which we expressed in *First National Bank.*").

68 698 P.2d at 1174.

69 Division of Elections, State of Alaska, *Initiative History* (June 24, 2019), http://www.elections.alaska.gov/doc/forms/H26.pdf.

70 *Id.* at 1181.

71 *Id.* at 1182-83 (Moore, J., dissenting).

72 *Id.* at 1189 (Burke, J., dissenting).

Thus, both the majority of this Court and dissenting justices have repeatedly recognized the toothless nature of Alaska's single-subject rule as applied by this Court.

2. The constitution does not mandate using the same lax single-subject standard for legislation and initiatives.

A toothless single-subject rule may be appropriate—and relatively harmless—when it comes to bills passed by the Legislature, but different considerations apply when ballot initiatives are put before voters. Nonetheless, in *Short v. State* and *Yute Air*, the Court opined that the standard must be the same in all contexts.[73] This is the conclusion the State asks the Court to overrule as originally erroneous, if *Croft* does not supersede it. Neither constitutional language, nor reason, nor policy supports applying the same "almost meaningless" standard to initiatives as to bills passed by the Legislature.

Short v. State—like *Gellert*—involved a challenge to a bond proposition that had already been passed by Legislature and then approved by the voters.[74] The bonds were intended to pay for correctional facilities and Department of Public Safety buildings.[75] In a footnote—and without substantive explanation—the Court rejected the idea that the single-subject rule "should be applied more stringently" when measures are presented to the voters on the ballot.[76] The Court opined that "the policies behind the one-subject rule

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73 *Short v. State*, 600 P.2d 20, 22 n.4 (Alaska 1979); *Yute Air*, 698 P.2d at 1182 (Moore, J., dissenting) ("Having made the rule almost meaningless as applied to legislative enactments, this court has extended the same liberal interpretation to the initiative process.").

74 600 P.2d at 22.

75 *Id.* at 21.

76 *Id.* at 22 n.4.

are the same as regards the members of the state legislature who must vote on the measure in the first instance and the voters who must subsequently ratify the enactment" and that "[t]hus, there does not appear to be any valid purpose to be served by adopting a more restrictive interpretation ... in cases where the voters either initiate or ratify proposed legislation in their capacity as the larger legislative body of the state."[77]

Then, in *Yute Air*—the transportation initiative case discussed above—the Court held that the Alaska Constitution does not permit a "one subject rule for initiatives which is more restrictive than the rule for legislative action."[78] This conclusion, the Court said, was compelled by the instruction of article XII, section 11, that "[u]nless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI."[79]

But *Yute Air*'s conclusion that the single-subject standard must be identical in the initiative and legislative contexts is not actually compelled by article XII, section 11, and neither reason nor policy supports it.

Article XII, section 11, was simply meant to clarify the delegates' intent when they used the phrases "by law" and "by the legislature" in the constitutional text.[80] This issue arose during debate when the style and drafting committee proposed amendments to the judiciary article because some members believed that the initiative power should not

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77 *Id.*

78 698 P.2d at 1181.

79 *Id.*; Alaska Const. art. XII, § 11.

80 PACC at 2820-30, 2835-51 (Jan. 21, 1956); PACC at 3654-56 (Jan. 30, 1956).

be used to address certain subjects related to the courts.[81] To effectuate their desired limitation, the committee proposed that the phrase "by the legislature" be understood to limit a subject to only the legislature's power, and the phrase "by law" be understood to place a subject within the scope of the people's initiative power.[82] But the delegates rejected this approach because by that point, most of the constitution had already been drafted without this distinction in mind.[83] So instead, the delegates adopted article XII, section 11 to clarify that the two terms had been used interchangeably in the constitution, and that the initiative power extends to any subject "unless clearly inapplicable."[84]

Thus, the purpose of the second sentence of article XII, section 11 is to describe the *subjects* on which the people may legislate by initiative, rather than the form or process by which they can do so. The phrase "[u]nless clearly inapplicable" refers to substantive changes to the law that cannot be effected by initiative. For example, Alaska's court rules cannot be changed by initiative because the constitutional text makes the initiative power "clearly inapplicable" to that subject by mandating a "two-thirds vote of the members elected to each house."[85] Except in such situations, the people enjoy the same substantive "law-making powers" as the Legislature, subject to the express restrictions laid out in article XI, which precludes the use of the initiative "to dedicate

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81 PACC at 2821.

82 PACC at 2821-22.

83 PACC at 2836-38.

84 Alaska Const. art. XII, § 11.

85 Alaska Const. art. IV, § 15; PACC at 2499.

revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation."[86]

But although the Legislature and the people by initiative may generally legislate on the same *subjects*, they obviously cannot do so via the same *procedures*. For example, article II, section 14 mandates a minimum level of deliberation by the Legislature that is not—and could not be—required for initiatives. And article II, sections 15 and 16 subject the Legislature's law-making power to the governor's veto power, which is not the case for initiatives.[87] Conversely, an initiative must be signed by qualified voters and filed with the lieutenant governor—things the Legislature need not do to pass a law.[88] Because the Legislature's law-making *process* is inherently different from the initiative process in many ways, this Court need not apply the same standards when evaluating *procedural* limitations in the two contexts.

And the single-subject rule is a procedural limitation, not a substantive one. It is contained in article II, section 13, which is entitled "Form of Bills" and deals with—as the Court has put it—"the mechanics of legislation."[89] Section 13 is the first of five procedural provisions; it contains the single-subject rule, the confinement clause (which limits appropriations bills to appropriations), the requirement that a bill's subject be

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86 Alaska Const. art. XI, § 7.

87 *See* AS 15.45.220 ("If a majority of the votes cast on the initiative proposition favor its adoption, the proposed law is enacted, and the lieutenant governor shall so certify. The act becomes effective 90 days after certification.").

88 Alaska Const. art XI, § 2.

89 *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772 (Alaska 1980).

expressed in its title, and the language of the enacting clause. Section 14 authorizes the Legislature to "establish the procedure for enactment of bills into law," and also requires three readings of a bill in each house on three separate days,[90] the support of a majority in each house, and the entry of votes in the journal.[91] Section 15 provides that the governor may veto legislation and strike or reduce items in an appropriation bill. Section 16 authorizes the Legislature to override the governor's veto. And Section 17 dictates what happens when a bill is not signed by the governor. Like these surrounding provisions, the single-subject rule is a procedural limitation that does not circumscribe *the subjects* upon which the Legislature—or the people—can legislate, only *the process* for doing so.

Because the single-subject rule is a procedural limitation, not a substantive limitation, article XII, section 11 does not—contrary to *Yute Air*—dictate that it be applied the same way to initiatives as to bills passed by the Legislature. Under an effective single-subject rule differing from the lax version this Court applies to the Legislature, Alaskan voters would retain the same exact power to enact the same exact substantive legal changes by initiative. They would just need to do so in a procedurally different manner—i.e., by voting on distinct major proposals separately.

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[90] A bill may be advanced from the second to the third reading in a single day with a three-fourths vote in the house considering the bill. Alaska Const. art II, § 14.

[91] Alaska Const. art II, § 14.

3. Policy considerations do not mandate using the same lax single-subject standard for legislation and initiatives.

As Justice Moore pointed out in dissent in *Yute Air*, the Court's "liberal interpretation of the single-subject rule" was developed in the legislative context, and "[w]henever a bill becomes law through the initiative process, all of the problems that the single-subject rule was enacted to prevent"—like log-rolling, inadvertence, stealth and fraud—"are exacerbated."[92] Policy considerations thus support a more effective single-subject standard in the initiative context than in the legislative context.

The legislative and initiative contexts are quite different. Legislators create and vote on legislation through a very structured, lengthy, and public process. If they disagree with elements included in a bill, they can debate, suggest amendments to discrete subparts, and compromise. Voters confronted with an initiative, by contrast, engage in no structured process and have only one opportunity to give an up-or-down vote on the entire package of provisions that sponsors choose to include in an initiative.[93] As

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92 *Yute Air*, 698 P.2d at 1184 (Moore, J., dissenting).

93 *Cf. Carney v. Attorney Gen.*, 850 N.E.2d 521, 531 (Mass. 2006) ("Unlike a legislator, the voter has no opportunity to modify, amend, or negotiate the sections of a law proposed by popular initiative. He or she cannot sever the unobjectionable from the objectionable. He or she must vote the measure 'up or down' as one piece. The voter may also, of course, choose not to vote on an initiative proposal at all. But this alternative merely favors the eventual winning position. It is hardly a choice that public policy wishes to encourage.").

Justice Moore observed, "there is no process for amending or splitting the several provisions in an initiative proposal."[94]

Because of these differences, the problems the single-subject rule is supposed to prevent—log-rolling, inadvertence, stealth, and fraud—are greater risks in the initiative context. Log-rolling is a greater risk because voters have only one chance to vote and no way to propose amendments, and thus may be more willing to swallow provisions they dislike in order to achieve passage of provisions they like.[95] Stealth and fraud are greater risks because, as Justice Moore observed, initiative sponsors "operate independently of any structured or supervised process" and often "use simplistic advertising" and "emphasize particular provisions of their proposition, while remaining silent on other (more complex or less appealing) provisions, when communicating to the public."[96] And inadvertence is also a greater risk because although some voters read and research

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94 *Yute Air*, 698 P.2d at 1185 (Moore, J., dissenting); *cf. Fine v. Firestone*, 448 So. 2d 984, 989 (Fla. 1984) ("[W]e find that we should take a broader view of the legislative provision because any proposed law must proceed through legislative debate and public hearing. Such a process allows change in the content of any law before its adoption.").

95 *Cf. State ex rel. Loontjer v. Gale*, 853 N.W.2d 494, 515 (Neb. 2014) ("Many voters who might oppose proposals for new forms of wagering, standing alone, might nonetheless want new funding for property tax relief and kindergarten through 12th grade education. But they would be presented with a take-it-or-leave-it proposition. And this type of proposition is at the heart of the prohibition against logrolling."); *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 282 (Colo. 2006) (en banc), as modified on denial of reh'g (June 26, 2006) ("The prohibition against multiple subjects . . . discourages placing voters in the position of voting for some matter they do not support to enact that which they do support.").

96 *Yute Air*, 698 P.2d at 1185 (Moore, J., dissenting); *cf. In re Title & Ballot Title*, 138 P.3d at 282 ("The prohibition against multiple subjects serves to defeat voter surprise by prohibiting proponents from hiding effects in the body of an initiative.").

initiatives in advance, others are confronted with an initiative for the first time in the ballot box. If an initiative is confined to a single, relatively narrow subject, such a voter can come to a reasoned conclusion on which way to vote that reflects his or her true preferences. But if an initiative contains a variety of different reforms under a vast topic like "land," such a voter may be unable to do so.

The reasons supporting a lax single-subject rule have less force in the initiative context. The Court in *Short* opined that a "particularly important" reason for a lax single-subject rule is "the need to give the legislature great latitude in enacting comprehensive legislation."[97] The Legislature is saddled with the primary responsibility for enacting and revising laws in Alaska and thus sometimes must craft comprehensive legislation on a broad topic like "criminal law." Preventing the Legislature from tackling such topics would have the effect of "multiplying and complicating the number of necessary enactments," as the Court observed in *Gellert*.[98] But initiatives are not the primary method by which laws are created, so there is less of a need for comprehensive legislation by initiative. Initiatives tend to cover more discrete topics such as legalizing marijuana[99]

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97 *Short*, 600 P.2d at 23.

98 522 P.2d at 1122.

99 2013 Op. Alaska Att'y Gen. (June 11), http://www.elections.alaska.gov/petitions/13PSUM/13PSUM-AG-Opinion-Signed-6-11-13.pdf#page=12.

or increasing the minimum wage.[100] A stricter single-subject rule for initiatives would be unlikely to excessively "multiply and complicate" the number of enactments.

Finally, as Justice Moore observed, a lax single-subject rule in the legislative context "represents an understandable deference to the legislature" and to "the legislative process itself," which is not warranted in the initiative context.[101] The Legislature employs an "elaborate procedure by which a bill originates, is reviewed by legislators and experts, and ultimately becomes law," whereas "[t]here are no such safeguards, no such review process, between the filing of an initiative petition and its submission to the electorate."[102] A lax single-subject rule in the initiative context gives power and deference not to voters, but to the initiative sponsors who operate without these safeguards. It allows initiative sponsors to craft complex bills including whatever material they wish, and then to force voters to struggle with how to express their political will through a single, all-or-nothing vote.

Because it is neither mandated by the constitution nor supported by policy considerations, the Court's conclusion in *Short* and *Yute Air* that the same lax single-subject standard must apply to initiatives as to legislation was originally erroneous.

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100 2013 Op. Alaska Att'y Gen. (June 20), http://www.elections.alaska.gov/petitions/13MINW/13MINW-AG-Opinion-6-20-13FINAL.pdf#page=7; *see also* Div. of Elections, *Initiative History*, *supra* n.69.

101 *Yute Air*, 698 P.2d at 1185 (Moore, J., dissenting).

102 *Id.*

B. More good than harm would result from overruling precedent to create a meaningful, voter-protective single-subject standard for initiatives.

Requiring initiative sponsors to separate distinct proposals into distinct initiatives will not inhibit direct democracy or burden the initiative process—on the contrary, it will improve the process by helping effectuate the will of the voters.

The sponsors argued below that the single-subject rule should be applied especially leniently in the initiative context because "sponsors lack the same resources and sophistication as the legislature." [Exc. 22] But they themselves acknowledged that their initiative includes three distinct substantive reforms, illustrating that they are capable of discerning different subjects. [Exc. 15]

The sponsors also failed to explain why separating their proposals would be a serious burden. If their three proposals each enjoy majority support, as they assert, they would enjoy this same support if separated into distinct initiatives. [Exc. 25, n.75] Each application could have the same 100 sponsors. Thus, if the Court were to affirm the denial of certification, the sponsors could simply pursue their three proposals as three initiatives. In fact, this is what occurred in *Croft*—the sponsors submitted a separate initiative covering only one subject, which ultimately went on the ballot.[103]

Not only would separating distinct proposals not inhibit direct democracy, it would actually support it. As *Croft* recognized, confining initiative bills to one subject

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[103] *Croft*, 236 P.3d at 371; *see also*, 2007 Op. Alaska Att'y Gen. (July 19), 2007 WL 2333358.

assures that voters can "express their will through their votes more precisely."[104] The single-subject rule thus protects "the voters' ability to effectively exercise their right to vote."[105] As Justice Moore recognized, "[b]y seriously implementing the single-subject rule, this court would mandate that the essence of the initiative process be respected" and "would insure that the will of the people is accurately and effectively expressed.[106]

Enforcing a single-subject rule and thereby empowering voters to more precisely express their will does not "condescend[] to voters," as the sponsors have asserted. [Exc. 21] The State does not assume that voters are uninformed or that they are unable to understand the proposals put before them. But no matter how intelligent and well-informed voters are, they can only cast a single, up-or-down vote on an initiative. And if that initiative encompasses multiple discrete proposals about which they have different opinions, they will be forced to struggle over how to meaningfully express their political will—for example, do they favor ranked-choice voting strongly enough to stomach an open, nonpartisan primary, which they vehemently oppose?[107] Or should they vote against the proposal they favor because it is tied to one they dislike? Separating the three subjects into three separate initiatives empowers voters to vote in full accordance with

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104 *Croft*, 236 P.3d at 372.

105 *Id.*

106 *Yute Air*, 698 P.2d at 1185.

107 *Cf. Fine*, 448 So. 2d at 988 ("An initiative proposal with multiple subjects, in which the public has had no representative interest in drafting, places voters with different views on the subjects contained in the proposal in the position of having to choose which subject they feel most strongly about.").

their true preferences rather than being needlessly forced to make calculated trade-offs and vote against their own interests on a subject of critical import.[108]

More good than harm would come from overruling precedent because the small administrative burden that initiative sponsors would suffer from the need to propose multiple initiatives would be more than offset by the benefit to voters, who would be relieved of such needless trade-offs and freed to express their will more precisely on critical issues. At most, a more effective single-subject standard for initiatives would create a small administrative hurdle in service of protecting voter choice—exactly what the single-subject requirement was intended to do.

As for the burden on these particular sponsors, 19AKBE is still at a relatively early stage—unlike in *Gellert*, *Short*, and *Yute Air*, the measure has not reached the ballot and voters have not yet voted on it.[109] Enforcing an effective single-subject rule now would not invalidate a law already passed by the voters. Nor would it prevent these sponsors from moving forward with any of their proposals. It would, however, allow the

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108 *Cf. Carney*, 850 N.E.2d at 532 (considering an initiative proposing to (1) amend criminal statutes to punish abuse or neglect of dogs, and (2) ban parimutuel dog racing, and rejecting the argument that these proposals were sufficiently related because they fell under the subject of humane treatment of dogs: "The voter who favors increasing criminal penalties for animal abuse should be permitted to register that clear preference without also being required to favor eliminating parimutuel dog racing. Conversely, the voter who thinks that the criminal penalties for animal abuse statutes are strong enough should not be required to vote in favor of extending the reach of our criminal laws because he favors abolishing parimutuel dog racing.").

109 *Gellert*, 522 P.2d at 1121; *Short*, 600 P.2d at 22; *Yute Air*, 698 P.2d at 1181.

voters to more meaningfully and effectively exercise their right to vote on the three distinct proposals.

The sponsors may argue that overruling precedent would do more harm than good given their reliance interests, because they are already out collecting signatures to try to get 19AKBE on the ballot in the next election. In *Yute Air*, the Court declined to reconsider its single-subject precedent, citing as a key reason the fact that "the sponsors of the initiative have relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot."[110] But this case is distinguishable from *Yute Air*, because in that case the Lieutenant Governor certified the initiative, in effect endorsing the sponsors' view of precedent.[111] But here, the Lieutenant Governor denied certification and thus gave the sponsors an opportunity to fix the single-subject problem before incurring any additional expense, just as the *Croft* sponsors did after discussions with the Department of Law.[112]

Nevertheless, in light of the language in *Yute Air*, the State sought very expedited consideration of this appeal, explaining that absent such consideration, initiative sponsors will likely always have incurred this kind of reliance interest by the time this Court considers an initiative appeal. [Mot. to Expedite Appeal at 4] Given the Court's lax single-subject precedent, any litigant arguing for a stronger single-subject standard will inevitably have to come before this Court in the position of an appellant, challenging a

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110 *Yute Air*, 698 P.2d at 1181.

111 *Id.*

112 *Croft*, 236 P.3d at 371

ruling that an initiative satisfies the single-subject rule (either because the Lieutenant Governor has certified the initiative and it is being challenged by others or, as here, because the superior court has overturned a decision denying certification). In both scenarios, the sponsors will be out collecting signatures by the time the case reaches this Court.

Here, the Court declined to super-expedite this appeal, rejecting the idea that it might be "swayed to not consider the appeal's legal merits because of perceived constraints raised by [the sponsors'] reliance interest" and stating that it will "give full and fair consideration to this appeal's legal merits, including [the State's] stated intent to ask us to reverse long-standing precedents." [Order Denying Mot. to Expedite at 1] Consistent with this statement, the Court should consider the State's arguments for overruling precedent without being constrained by the sponsors' reliance interests as they gather signatures.

III. The Court should apply a standard that looks at the inter-relatedness of initiative components and the significance of each proposed reform.

Whether based on *Croft* or an explicit overruling of precedent, the Court should apply a meaningful single-subject standard to initiatives. In *Yute Air*, the Court worried that "it is not at all clear that there are workable stricter standards."[113] But the Court can and should apply a stricter standard. That standard should consider both how the parts of an initiative are inter-related and the overall significance of each reform.

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113 698 P.2d at 1180.

First, the single-subject standard should consider the interrelationships between an initiative's provisions. The Court worried in *Gellert* that a strict single-subject rule would complicate "the number of necessary enactment[s] and their interrelationships."[114] But the Court can avoid this problem by considering the interrelationships between provisions and only requiring the separation of those that are not interrelated. If one provision is necessary to make another provision complete or effective, those provisions are interrelated. For example, the initiative providing for Alaskans to be automatically registered to vote when they apply for the Permanent Fund Dividend included changes to both voter registration procedures and to the PFD application form, but the changes to the PFD form were necessary to make the voter registration procedures work.[115] Similarly, if two provisions are both implementation details of the same reform, those provisions are interrelated. For example, if an initiative creates a program, a provision imposing criminal penalties for violating the terms of the program would be interrelated.[116] But if neither of these things are true, the provisions are not interrelated and may not fall under the same subject. For example, ranked-choice voting in the general election is not interrelated with a top-four primary because each could be enacted fully independently of the other and the two are not implementation details of the same program.

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114 522 P.2d at 1122.

115 Div. of Elections, State of Alaska, Initiative 15 PVR 3-4 (filed June 11, 2015), http://www.elections.alaska.gov/petitions/15PFVR/15PFVR-Proposed-Bill-Language.pdf.

116 Thus, if the mortgage relief program at issue in *Suber v. Alaska State Bond Committee*, 414 P.2d 546 (Alaska 1966), had been enacted via initiative, the measure would have survived under this test.

Cases about severance—which consider whether invalid parts of a law can be severed to avoid striking the whole law—can inform this inter-relatedness inquiry. This Court's *Lynden Transport* test for severability asks (1) whether "legal effect can be given" to the statute with the invalid provisions stricken and (2) whether the legislature (or the voters, in the initiative context) would have wanted the remaining provisions to stand in the event that the invalid provisions were stricken.[117] If one provision could not be severed from other provisions under this test, that would be a good indication that the provisions are inter-related and thus must fall under the same subject. Here, 19AKBE's three subjects could be severed from each other under this test.

The Supreme Judicial Court of Massachusetts uses a relatedness test for initiative subjects that further demonstrates—contrary to *Yute Air*—that "workable stricter standards" can and do exist. Unlike Alaska law, Massachusetts law explicitly allows multi-subject initiatives, which would lead one to expect Massachusetts courts to be even *more* permissive of wide-ranging initiatives like 19AKBE than Alaska courts.[118] But Massachusetts law requires the parts of a multi-subject initiative to be at least "related" or

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117 *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 209 (Alaska 2007) (quoting *Lynden Transp., Inc. v. State*, 532 P.2d 700, 713 (Alaska 1975)).

118 *See* Mass. Const. 48, Init., Pt. 2, § 3 (requiring the attorney general to certify that an initiative "contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent"); *cf. Abdow v. Attorney Gen.*, 11 N.E.3d 574, 590 (Mass. 2014) ("[T]he delegates to the constitutional convention that approved art. 48 did, after all, permit more than one subject to be included in a petition, and we ought not be so restrictive in the definition of relatedness that we effectively eliminate that possibility and confine each petition to a single subject.").

"mutually dependent,"[119] and the Massachusetts court has been able to craft a relatedness inquiry that is more meaningful than this Court's "anything goes" approach. Under this inquiry, "[i]t is not enough that the provisions in an initiative petition all 'relate' to some same broad topic at some conceivable level of abstraction"; indeed, "[a]t some high level of abstraction, any two laws may be said to share a 'common purpose.'"[120] So the court asks first, "[d]o the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on 'yes' or 'no' by the voters?"[121] It asks second, does the initiative petition "express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy?"[122] "[T]wo provisions that 'exist independently' of each other are not mutually dependent."[123]

The Massachusetts court recognizes that the reason to prevent very broad multi-subject initiatives is not to hinder direct democracy, but rather to protect effective voter choice: very broad initiatives might "confuse or mislead voters" or "place them in the

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119 Mass Const. 45, Init., Pt. 2, § 3.

120 *Carney*, 850 N.E.2d at 532; *accord Gray v. Attorney Gen.*, 52 N.E.3d 1065, 1073 (Mass. 2016) ("We agree that at a conceptual level, curriculum content and [educational] assessment are interconnected, but the related subjects requirement is not satisfied by a conceptual or abstract bond.").

121 *Oberlies v. Attorney Gen.*, 99 N.E.3d 763, 771 (Mass. 2018) (quoting *Abdow*, 11 N.E.3d at 590).

122 *Id.*

123 *Id.* at 770.

untenable position of casting a single vote on two or more dissimilar subjects,"[124] thereby depriving them of their right to "enact a uniform statement of public policy through exercising a meaningful choice in the initiative process."[125]

The Massachusetts court has applied its relatedness inquiry to disallow multi-subject initiatives like 19AKBE. For example, the court invalidated an "educational reform" initiative that proposed to both end the use of "Common Core" standards and require the annual release of assessment tests.[126] Although these two subjects "were connected at a 'conceptual level,'" they "addressed separate public policy issues" and the court thought "it would be unfair to place voters in the untenable position of casting a single vote on two dissimilar subjects, which each happened broadly to pertain to aspects of educational reform."[127] Similarly, the court rejected a "humane treatment of dogs" initiative that proposed to both expand criminal sanctions for people who abuse dogs and to dismantle the dog racing industry.[128] The court reasoned that voters might have different opinions on the two provisions and should not be forced into unnecessary

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124 *Abdow*, 11 N.E.3d at 590.

125 *Carney*, 850 N.E.2d at 525.

126 *Gray*, 52 N.E.3d at 1073.

127 *Anderson v. Attorney Gen.*, 99 N.E.3d 309, 323 (Mass. 2018) (summarizing *Gray*, 52 N.E.2d 1065).

128 *Carney*, 850 N.E.2d at 533.

tradeoffs in the ballot box.[129] Similarly here, although the components of 19AKBE are connected at a broad conceptual level because they all pertain to elections, they do not possess "an operational relatedness" that "would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy."[130] Indeed, one of the proposals in 19AKBE—ranked-choice voting—may soon appear on the ballot in Massachusetts, but as a stand-alone initiative, not combined with other major reforms.[131]

The Court may worry that a stricter single-subject standard would multiply the number of initiatives by requiring every minor independent change to existing law to be proposed as a stand-alone measure rather than being combined with other changes. To prevent this, the standard should also consider the overall significance of an initiative's provisions. Even if the provisions are not inter-related as discussed above, they may still fall within a permissible single subject if they constitute minor adjustments to existing law rather than major reforms. Requiring every minor adjustment to be set forth in a separate initiative might complicate "the number of necessary enactment[s] and their

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129 *Id.* at 532 ("The voter who favors increasing criminal penalties for animal abuse should be permitted to register that clear preference without also being required to favor eliminating parimutuel dog racing. Conversely, the voter who thinks that the criminal penalties for animal abuse statutes are strong enough should not be required to vote in favor of extending the reach of our criminal laws because he favors abolishing parimutuel dog racing.").

130 *Oberlies*, 99 N.E.3d at 771.

131 State of Massachusetts, Office of Attorney General Maura Healey, *Current Petitions Filed* (last accessed Nov. 15, 2019), https://www.mass.gov/info-details/current-petitions-filed#19-10-initiative-petition-for-a-law-to-implement-ranked-choice-voting-in-elections-.

interrelationships."[132] But major, distinct reforms like ranked-choice voting and eliminating the party primary—both of which would indisputably effect fundamental changes to Alaska's democratic system—can and should be voted on separately.

Crafting a workable stricter standard is not impossible. The Court can—and should—use such a single-subject standard to protect Alaskan voters from being forced into a single all-or-nothing vote on an initiative like 19AKBE.

CONCLUSION

For these reasons, the Court should reverse the superior court's decision granting summary judgment to the sponsors and direct the entry of judgment in favor of the State.

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132 *Gellert*, 522 P.2d at 1122.